Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Non-Accounting	)	CC Docket No. 96-149
Safeguards of Sections 271 and 272 of the	)	
Communications Act of 1934, as amended	)	

REPLY COMMENTS OF U S WEST, INC.

Richard A. Karre
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2791

Attorney for

U S WEST, INC.

Of Counsel,
Dan L. Poole

March 21, 1997

TABLE OF CONTENTS

SUMMARY

The comments filed in this proceeding present a variety of proposals to modify the reporting regime proposed in the Further Notice. In these Reply Comments, we describe how the Commission should assess these proposals. Specifically, we believe the Commission should focus on the purposes of Section 272(e)(1) in crafting a reporting regime to implement that Section. Those purposes are narrow, and the reporting to implement them should be narrow as well. Moreover, we believe the Commission should bear in mind the overall purposes of Section 272. Informed by these factors, we believe the Commission will inevitably decide to reject the proposals to expand the reporting scheme under consideration here.

We also discuss the modifications we believe appropriate in order to make the reporting scheme meaningful, but not overly burdensome. Some of the Commission's initial proposals would not produce meaningful reports, in the sense that they are too subjective or open to manipulation. We suggest modifications to some proposed reporting categories and outright rejection of others. The total package, if adopted by the Commission, would provide the information necessary to implement Section 272(e)(1) without unduly burdening the BOCs.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended	)))	CC Docket No. 96-149

REPLY COMMENTS OF U S WEST, INC.

In this proceeding, the Federal Communications Commission ("Commission") proposes reporting requirements to measure the Bell Operating Companies' ("BOC") compliance with Section 272(e)(1).[1] As it assesses its proposals and the proposals submitted in the comments, the Commission must bear in mind the purpose of that provision and – perhaps more important – the purposes of Section 272 generally.

Section 272(e)(1) requires a BOC to fulfill the requests of unaffiliated entities for exchange service and exchange access as quickly as it fulfills like requests for its affiliates (or itself). On its face Section 272(e)(1) relates only to the time required for fulfilling service requests. It has nothing to do with other attributes of service or other sorts of potential discrimination. If a proposed measurement category does not reasonably relate to measuring the time a BOC requires to fulfill requests for service, the Commission may not require it under the aegis of Section 272(e)(1).

[1] In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-489, rel. Dec. 24, 1996 ("Further Notice" or "Notice").

More important, perhaps, is the general purpose of Section 272: to protect the BOCs' interLATA and manufacturing competitors from the BOCs' supposed market power in the local exchange. The Commission should not adopt a proposed reporting scheme unless it will demonstrably assist the Commission in monitoring and preventing discrimination against interLATA providers or manufacturers of telecommunications equipment.

Finally, we believe the Commission must consider whether a proposal will truly assist the monitoring of the BOCs' compliance with Section 272(e)(1), or merely provide fodder for complaints of discrimination. Some parties to this proceeding have a vested interest in attempting to show that the BOCs are in violation of Section 272(e)(1). If they can convince the Commission to implement a measurement scheme that can always be manipulated to show such an apparent violation, their task will be that much easier. The Commission must take steps to ensure that its monitoring scheme is not susceptible to such manipulation.

I. THE COMMISSION SHOULD REJECT PROPOSALS TO EXPAND THE SCOPE OF THE REPORTING REQUIRED OF THE BOCS.

Several parties invite the Commission to expand the scope of the reporting to be required of the BOCs. These proposals would greatly increase the burdens on the BOCs without advancing any useful purpose.

A. Telephone Exchange Service

Joined by AT&T Corp. ("AT&T")[2] and MCI Telecommunications Corporation ("MCI"),[3] Teleport Communications Group Inc. ("TCG")[4] urges the Commission to

[2] Comments of AT&T, filed herein Feb. 19, 1997 at 11-14.

adopt reporting requirements for the BOCs' provision of local service. The Commission rejected such reporting in CC Docket No. 96-98,[5] tentatively rejected it in the Notice herein,[6] and should reject it again here.

The premise of TCG's argument lies within Section 272(e)(1), which requires a BOC to provide "telephone exchange service," as well as exchange access, in as timely a fashion as it provides those services to itself. TCG bootstraps this to a requirement for "service or facilities related to the provisioning of telephone exchange service."[7] To implement this supposed requirement, TCG would require the BOCs to report on 14 unbundled network elements.[8]

But telephone exchange service and a network element are not at all the same, as witnessed by the fact that the 1996 Act contains separate definitions for each.[9] Section 272(e)(1) relates to the BOCs' provision of telephone exchange service to unaffiliated entities. The Commission should not – indeed, cannot – expand its scope to encompass the provision of telephone exchange service – using unbundled network elements – by unaffiliated entities.

---

[3] Comments of MCI, filed herein Feb. 19, 1997 at 4-5.

[4] Comments of TCG, filed herein Feb. 19, 1997 at 3-17.

[5] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98 and 95-185, First Report and Order, FCC 96-325, rel. Aug. 8, 1996 ¶ 311, appeals pending sub noms. Iowa Utilities Board, et al. v. FCC, 96-3321, et al. (8th Cir.).

[6] Further Notice ¶ 382.

[7] TCG at 7.

[8] Id. at 7-8. AT&T (at Exhibit 2) demands reporting for 13 categories of resold service and network elements.

[9] Cf., § 3(29), with, § 3(47).

Section 272(e)(1) would perhaps permit the Commission to require the BOCs to report the timeliness of their provision of telephone exchange service (as distinguished from network elements) to their affiliates. There is, however, no good reason for the Commission to impose such a requirement.

The thrust of Section 272(e) as a whole is to preclude the BOCs from discriminating in favor of their own (or their separate affiliates') interLATA operations. Those interLATA operations will not directly use telephone exchange service to provide interLATA service. At most, telephone exchange service provides administrative support to the interLATA operation. Though a BOC might attempt to hinder an interLATA competitor by the dilatory provisioning of its local service, that would likely be a peculiarly ineffective (and highly visible) effort. Beyond question, the timeliness of the BOCs' provision of exchange access is far more significant to an interexchange carrier's success. The Commission has properly focused on exchange access, and no party has shown good reason to redirect the Commission's attention.

Finally, any reporting the Commission might require with respect to the BOCs' provision of telephone exchange service will likely overlap with the reporting requirements of the state commissions. Such a duplication of effort should not be required absent a compelling reason.

B. Service Quality

AT&T[10] and MCI[11] urge the Commission to amend the 1996 Act by requiring the BOCs to report several service quality measures.

Section 272(e)(1) deals very precisely with but one subject: the timeliness of the BOCs' provision of telephone exchange service and exchange access. If Congress had intended to address service quality issues, it surely would have said so.

Moreover, the BOCs already provide extensive reporting of quality of service measures for both the Commission and the state commissions. Requiring another layer of such reports would add to the burdens of the BOCs to no useful purpose.

C. Non-Affiliate Reporting

MCI[12] urges the Commission to require the BOCs to report their installation and maintenance results, on an aggregated basis, for unaffiliated carriers. MCI would also require the BOCs to provide each carrier with a quarterly comparison of its installation and maintenance results for that carrier to the results for the BOC's affiliates. Though MCI does not specifically indicate, it apparently intends that the BOCs would provide this information by state.[13]

Neither of these proposals would serve a useful purpose. They would merely impose additional burdens on the BOCs, and the Commission should reject both of them.

---

[10] AT&T at 8-11.

[11] MCI at 5-6.

[12] Id. at 7-8.

[13] Id. at 10.

MCI argues that, while aggregate data can "obscure discrimination," they still provide a "ready means" to "monitor BOC compliance."[14] But if such a report were to demonstrate discrimination in the aggregate, the BOC would necessarily also be guilty of discriminating against one or more carriers individually. We can reasonably expect that some or all of those carriers would file complaints, and they would likely do so before the BOC files the aggregated report demanded by MCI.

MCI would also require the BOCs to file quarterly reports with each carrier, comparing the BOC's results for that carrier with its results for its affiliates.[15] U S WEST Communications, Inc. serves over a thousand carriers of various descriptions, any of whom could order access services. A report such as MCI proposes would impose an enormous burden for little or no gain. MCI claims this report would enable each carrier to verify the aggregate data noted above. We have already demonstrated the uselessness of the aggregate report; creating another report to verify that report merely compounds the futility.

D. Level of Aggregation

The BOCs have generally supported aggregating reporting data across their entire corporate families. Doing so will ensure the most valid sample sizes and protect the BOCs' proprietary information.[16]

---

[14] Id. at 7.

[15] Id. at 7-8.

[16] Comments of U S WEST, Inc. ("U S WEST"), filed here Feb. 19, 1997 at 9-10; Comments of Ameritech, filed herein Feb. 19, 1997 at 16.

Predictably, AT&T,[17] TCG[18] and Telecommunications Resellers Association ("TRA")[19] demand separate reporting for each BOC affiliate. AT&T goes so far as to claim that this level of disaggregation is required by the 1996 Act.[20] That is, because Section 272(e)(1) requires a BOC to provide the same provisioning times to non-affiliates as it provides "to itself or to its affiliates," it prohibits the averaging of response times between a BOC and its affiliates. More generally, all three argue that aggregating data across companies will afford the BOCs opportunities to "cheat" by moving more profitable customers to an affiliate and then giving that affiliate shorter intervals.

These parties' positions reflect their view that the Commission must use Section 272(e)(1) as a license to ferret out any discrimination a BOC might perpetrate on any competitor in any context. But Section 272 in general, and Section 272(e)(1) in particular, were put into the 1996 Act to regulate the BOCs' provision of interLATA service and, to a lesser extent, their manufacturing activities. Section 272(e)(1) is not a catch-all prohibition on BOC discrimination.

Moreover, by prohibiting discriminatory provisioning times "to itself [the BOC] or its affiliates," this provision intends only to ensure its continued application once the separate-affiliate requirement ceases to apply to the BOCs' interLATA and manufacturing activities (see Section 272(f)(1)). That is, even when

---

[17] AT&T at 18-20.

[18] TCG at 14-17.

[19] TRA at 12.

[20] AT&T at 19.

the BOCs are permitted to integrate their interLATA and manufacturing operations, Congress intended that they continue to have an obligation regarding equality of provisioning times.

AT&T is simply wrong in claiming that Section 272(e)(1) requires disaggregated reporting. The provision does not expressly require any reporting. The Commission determined that reporting is necessary to implement Section 272(e)(1), but that does not translate into an obligation imposed by the statute itself, and it certainly does not create a statutory obligation for a specific type of reporting.

E. Level of Reporting

In its Comments, U S WEST urged the Commission to allow the BOCs to report aggregated data for their entire territory.[21] U S WEST has a large number of small states. Producing a separate report for each state would add considerably to the burden of these reports, and the size of the sample for these states will frequently be too small to be meaningful. In any event, such a requirement would likely overlap with the requirements of the state commissions.

At all odds, the Commission must reject the proposal by TCG[22] and TRA[23] to require reporting by exchange. U S WEST has over 1,350 exchanges (wire centers); an individual report from most of them would produce a sample size too small to have any validity.

---

[21] Comments of U S WEST at 9.

[22] TCG at 16.

[23] TRA at 12.

More important, such a requirement would place an insuperable burden on the BOCs. Indeed, combined with the balance of TCG's proposal, reporting by exchange would produce a reporting requirement of staggering proportions. TCG recommends AT&T's reporting scheme for exchange access, which requires 30 separate data entries for each affiliate.[24] TCG's local service recommendation would require the reporting of no less than 220 separate data entries per affiliate. Assuming a total of eight reporting companies,[25] a BOC would be required to report 2,000 data entries per exchange. That would leave U S WEST with some 2.7 million entries in each of its reports. Yet TCG tells us[26] -- presumably with a straight face -- that its recommendations "will not impose a significant burden on RBOCs."

Most of the information produced in such a report would have no value. The sample size in most exchanges would be too small to have any validity. The report would provide fodder for TCG to find "discrimination" by focusing on the small, meaningless outliers. And that, of course, is TCG's objective: a reporting scheme that it can use to support its inevitable claims of discrimination, regardless of their validity. It has no desire to find – let alone to prove – BOC compliance.

---

[24] TCG at 4 n.4 citing to AT&T's Ex Parte dated Oct. 3, 1996.

[25] U S WEST would have at least that many affiliates to report.

[26] TCG at 8.

F. Reporting Interval

The BOCs generally favor quarterly reporting, as do MCI[27] and TCG.[28] The monthly reports demanded by some[29] would triple the burden of the reporting scheme without adding measurably to the reliability of the data. Quarterly reporting is fully adequate to meet the legitimate needs of the carriers.

II. THE COMMISSION SHOULD MODIFY THE REPORTING CATEGORIES TO MAKE THEM MEANINGFUL.

Other than the BOCs themselves, only a few commentors had anything to say about the reporting categories proposed in the Further Notice. We discuss the comments in the Commission's proposals and assess the requests for added reporting categories as well.

A. The Categories Proposed By The Commission

The Further Notice proposed seven reporting categories to measure the BOCs' successes in meeting service requests for exchange access.

1. Successful completion according to desired due date. The BOCs are virtually unanimous in their view that the subjectivity of a "desired" due date makes this category unworkable and virtually useless.[30] AT&T concedes that

[27] MCI at 7-8.

[28] TCG at 8-9.

[29] AT&T at 17-18; Comments of Sprint Corporation, filed herein Feb. 19, 1997 at 4 ("Sprint"); TRA at 7-8.

[30] Ameritech at 9-11; Comments of BellSouth Corporation, filed herein Feb. 19, 1997 at 3 ("BellSouth"); Joint Comments of Bell Atlantic Telephone Companies and NYNEX Telephone Companies, filed herein Feb. 19, 1997 at 5 ("Bell Atlantic/NYNEX"); Comments of Pacific Telesis Group, filed herein Feb. 19, 1997 at 4-5 ("PacTel"); Comments of U S WEST at 5.

customer-desired due dates are beyond the BOC's control.[31] It argues, however, that they "remain the best available measure of how urgently a customer needs an order completed."[32] What AT&T does not tell us, however, is why this is at all relevant to the BOCs' compliance with Section 272(e)(1), and it is not readily apparent.

Given the problems inherent in this category, the Commission should delete it.

2. Time from BOC promised due date to circuit being placed in service. The BOCs generally agree with this category, though Bell Atlantic/NYNEX[33] and PacTel[34] would modify it somewhat to simplify the reporting. Either proposal would be satisfactory.

In any case, for the reasons noted above, the Commission should reject AT&T's proposal[35] to measure the time from customer-requested due date to circuit being placed in service.

3. Time for firm order confirmation. The BOCs are unanimous in their objection to this category,[36] which seeks to measure the time needed for a BOC to process service requests. BOCs sometimes provide this category of information to interexchange carriers, but the interexchange carriers use consistent processes to

---

[31] AT&T at 6.

[32] Id. at 5-6.

[33] Bell Atlantic/NYNEX at 5-6.

[34] PacTel at 6.

[35] Id.

[36] Ameritech at 9-11; BellSouth at 3-4; Bell Atlantic/NYNEX at 6; PacTel at 6-7; Comments of SBC Communications Inc., filed herein Feb. 19, 1997 at 5 ("SBC"); Comments of U S WEST at 5-6.

place orders. That is unlikely to be the case with new entrants. Thus, like the first category, this measure is subject to factors beyond the control of the BOC. It might not measure the BOC's performance as much as it measures the ability of the requesting carrier to submit accurate and complete service requests.

The Commission should delete this category of measurement.

4. Time from PIC change requests to implementation. The BOCs generally agree that this measure provides relevant information, but they note a number of implementation problems with it. BOC systems are generally incapable of measuring PIC-change implementation in 6-hour increments.[37] As Bell Atlantic/NYNEX notes,[38] the better course would be to measure only the average interval, measured in days.

Moreover, as U S WEST noted,[39] this category should exclude PIC changes that are combined with other activities. If a service order includes other work, the chances are the non-PIC work will take longer than the PIC change, yet the order will not show as completed until all the work is done, thus overstating the amount of time needed for the PIC change.

5. Time to restore and trouble duration. All parties agree that this is a relevant category, though the Commission needs to ensure that it has adequately and accurately defined just what it purports to measure here. As Bell

---

[37] BellSouth at 3-4; PacTel at 7.

[38] Bell Atlantic/NYNEX at 6.

[39] Comments of U S WEST at 6.

Atlantic/NYNEX notes,[40] this category as described measures two different periods: the time the BOC needs to restore service and the additional time needed to obtain the customer's concurrence that the service is restored. U S WEST believes time to restore is the more objective measure and will produce more consistent results. Trouble duration can be affected by the length of time needed to get in touch with a customer and by other factors unrelated to the actual service outage.

6. Time to restore PIC after trouble incident. If the Commission will clarify that a "trouble incident" means a PIC dispute, U S WEST believes this is an appropriate measure.

7. Mean time to clear network and the average duration of trouble. The BOCs generally agree that this is a relevant measure. PacTel notes, however,[41] that it could include the time needed to have a repair technician visit the customer's premises to determine whether the trouble is within the customer's network or the BOC's. The Commission should clarify that this category includes only troubles within the BOC's network; that is, if a BOC dispatches a technician to the customer's premises and the trouble turns out to be on the customer's side of the network interface, the trip would not be reported in this category. With that limitation, we believe this category should appropriately include the time spent by a technician to diagnose the trouble.

[40] Bell Atlantic/NYNEX at 7.

[41] PacTel at 8.

B. The Proposals Of AT&T And MCI

AT&T[42] and MCI[43] ask the Commission to require the BOCs to report "Time from Service Request to Installation." AT&T concedes[44] that this measure has "limited significance," and that may overstate the case. AT&T claims this category would assess "parity in provisioning intervals" and would hinder a BOC's attempts to mask discrimination by manipulating its own due dates.[45] But if a BOC were willing to "manipulate" its own due dates as AT&T suggests, what would prevent it from manipulating service order dates as well? More important, perhaps, implementing a measurement category such as this would require the Commission to set the standards for what constitutes a completed service request. Otherwise a carrier could submit defective service requests, knowing the BOC will have to expend time to get complete and accurate information before it can begin to process the order. The Commission should reject this proposal.

AT&T[46] also requests an additional category for "Jeopardy Notification Provided." This would measure the percentage of missed due dates for which the BOC informed the customer that it would be unable to meet the due date.
U S WEST does not capture this information, and doing so would be difficult. In

---

[42] AT&T at 6-7.

[43] MCI at 9.

[44] AT&T at 6.

[45] Id. at 7.

[46] Id. at 7-8.

any event, the information does not measure the timeliness with which a BOC fulfills requests for service. It is thus beyond the scope of Section 272(e)(1).

MCI[47] asks the Commission to add a category for the standard due date promised and a second category for the percentage of requests for intervals shorter than standard that the BOC was able to fulfill. This proposal resurrects the subjectivity of a customer desired due date, and the Commission should reject it for that reason alone.

Respectfully submitted,

U S WEST, INC.

By: Richard A. Karre (RW)

Richard A. Karre
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2791

Its Attorney

Of Counsel,
Dan L. Poole

March 21, 1997

[47] MCI at 9.

CERTIFICATE OF SERVICE

I, Rebecca Ward, do hereby certify that on this 21st day of March, 1997, I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST, INC.** to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.

Rebecca Ward

Rebecca Ward

***Via Hand-Delivery**

(CC96149 6I.COS/DK/lh)

*James H. Quello
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, DC 20554

*Reed E. Hundt
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, DC 20554

*Susan P. Ness
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, DC 20554

*Rachelle B. Chong
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, DC 20554

*Regina M. Keeney
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, DC 20554

*Janice M. Myles
Federal Communications Commission
Room 544
1919 M Street, N.W.
Washington, DC 20554

(Including 3 x 5 Diskette w/Cover Letter)

*A. Richard Metzger, Jr.
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, DC 20554

*Carol Mattey
Federal Communications Commission
Room 544
1919 M Street, N.W.
Washington, DC 20554

*Melissa Waksman
Federal Communications Commission
Room 544
1919 M Street, N.W.
Washington, DC 20554

*Donald Stockdale
Federal Communications Commission
Room 544
1919 M Street, N.W.
Washington, DC 20554

*Radhika Karmarkar
Federal Communications Commission
Room 544
1919 M Street, N.W.
Washington, DC 20554

*Richard K. Welch
Federal Communications Commission
Room 544
1919 M Street, N.W.
Washington, DC 20554

*International Transcription
Services, Inc.
Suite 140
2100 M Street, N.W.
Washington, DC 20037

Teresa Marrero
J. Manning Lee
Teleport Communications Group, Inc.
Suite 300
Two Teleport Drive
Staten Island, NY 10311

Alan Buzacott
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006

Mark C. Rosenblum
Leonard J. Cali
James H. Bolin, Jr.
AT&T Corp.
Room 3247H3
295 North Maple Avenue
Basking Ridge, NJ 07920

Leon M. Kestenbaum
Jay C. Keithley
Norina T. Moy
Sprint Communications Company, Inc.
Suite 1100
1850 M Street, N.W.
Washington, DC 20036

Charles C. Hunter TRA
Catherine M. Hannan
Hunter & Mow, PC
Suite 701
1620 I Street, N.W.
Washington, DC 20006

Margaret E. Garber
Pacific Telesis Group
4th Floor
1275 Pennsylvania Avenue, N.W.
Washington, DC 20004

Jeffrey B. Thomas
Pacific Telesis Group
Room 1530-A
140 New Montgomery Street
San Francisco, CA 94105

Campbell L. Ayling
NYNEX Telephone Companies
Room 3725
1095 Avenue of the Americas
New York, NY 10036

Edward Shakin
Bell Atlantic Telephone Companies
8th Floor
1320 North Court House Road
Arlington, VA 22201

Robert Sutherland
A. Kirven Gilbert, III
BellSouth Corporation
Suite 1700
1155 Peachtree Street, N.E.
Atlanta, GA 30309-3610

Alan N. Baker
Ameritech Operating Companies
Room 4H84
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025

Robert M. Lynch
David F. Brown
SBC Communications, Inc.
Room 1254
175 East Houston
San Antonio, TX 78205

Durward D. Dupre
Mary W. Marks
Southwestern Bell Telephone Company
Room 3536
One Bell Center
St. Louis, MO 63101

(CC96149I.DK/lh)
Last Update: 3/21/97